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RUEHMN/AMEMBASSY MONTEVIDEO 5369
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C O N F I D E N T I A L LA PAZ 000711

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USAID LAC/AA PAUL BONICELLI, JOSE CARDENAS, TULLY CORNICK
USAID LAC/SA JEFF BAKKEN

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TAGS: [ECON](#) [PGOV](#) [PREL](#) [PHUM](#) [ASEC](#) [PINR](#) [BL](#)

SUBJECT: BOLIVIA: COMMUNITY JUSTICE, INDIGENOUS JUSTICE,
ATTACKS ON USAID

REF: 07 LA PAZ 521

Classified By: EcoPol Chief Mike Hammer for reasons 1.4b,d

11. (C) Summary: On March 31, Emboff meet with Vice Minister of Community Justice and Human Rights Valentin TICONA Colque.

Also present was Director of Community Justice Petroni FLORES Condori. Emboff had requested the meeting to learn more about community justice under the new draft constitution. The Vice Minister opened the meeting on the attack, complaining about a recent Human Rights Foundation report on community justice (available at www.humanrightsfoundation.org.) The tone of the meeting did not improve: both Bolivian officials were alternately defensive and accusatory. In general, the Vice Minister's approach to community justice seems to be more rhetoric than substance. Ticona also falsely accused the Embassy and USAID of "funding corruption", singling out a USAID-linked NGO and two Embassy contacts for specific accusations of "conspiracy." End Summary.

Vice Minister Ticona's Background

12. (C) Valentin TICONA Colque was a functionary of the Movement Toward Socialism (MAS) party before being appointed to the Vice Ministry. He claims to speak Quechua, Aymara and Spanish, and he also claims to have had local leadership experience in North Potosi before and during his time with the MAS. He has visited the United States twice on UN-funded trips, and he mentioned that he would be going to the United States on another UN-funded trip in the near future. Ticona speaks in the sound-bites of a MAS believer, on a number of occasions directly quoting MAS senior leadership's more-memorable turns of phrase: "liberty is not libertinism;" "the Embassy should do diplomacy, not politics;" "plants and rocks are alive, we deal in cosmic rights, not human rights."

He spoke fervently on the 500-plus years of suffering and subjugation of the indigenous peoples of Bolivia, but seemed less secure on the actual steps his office would be taking to improve the lot of the people.

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Community Justice Is Not Lynching
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¶3. (C) Ticona and Flores began the meeting by demanding an explanation for a January 2008 Human Rights Foundation report on community justice. Emboff explained that the Foundation is not affiliated with the USG and therefore the Ministry should direct questions or complaints to the Foundation. Nonetheless, throughout the meeting Ticona returned to the report, complaining about what he viewed as insults to the President and to Bolivia's sovereignty. Ticona was particularly incensed that a report on community justice would mention (and list details of) recent lynchings. When asked about the popular confusion that conflates community justice with lynching (for example, the mob that recently murdered three policemen in Cochabamba claimed that it did so in the name of community justice,) Ticona merely repeated that the two are not the same thing. On follow-up questioning, Ticona did not seem to have any firm plans for educating the populace on the difference.

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Community Justice Is Indigenous Justice
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¶4. (C) In fact, Ticona objected to the term 'community justice', instead referring to it as "indigenous original justice." Ticona opined that the international community does not understand the goals of President Morales: "Evo is not trying to create a country like Cuba, he is building an indigenous country." (Comment: Many indigenous observers have claimed the opposite: that Evo, the indigenous leader of the Movement Toward Socialism party, is less interested in indigenism and more interested in socialism. End comment.)

¶5. (C) Ticona and Flores objected also to the common estimate that Bolivia has thirty-six indigenous communities, instead claiming the existence of "over fifty" indigenous communities (Note: The draft MAS constitution acknowledges thirty-six indigenous groups, including afro-Bolivians. End note.) Ticona said that each of the over fifty indigenous communities will have its own concept of community (or indigenous) justice, and Ticona denied that such a proliferation of legal systems and jurisdictions could be problematic. He said that although his ministry does not have experts in those fifty systems (he mentioned only a Quechua and an Aymara expert,) the ministry will have no trouble working with all fifty or more systems because they will "go to the communities and learn." However, Ticona also said that many communities have lost track of their history of community justice, and therefore the government will teach them and help them "save the good and get rid of the bad."

¶6. (C) When asked where community justice would apply, Ticona said only in the countryside, and that city-dwelling indigenous Bolivians would have to adhere to "ordinary" law in the cities. Ticona said that community justice would be applied territorially (that is: in the countryside and in indigenous communities, community justice would prevail.) In response to a hypothetical situation of a Guarani indigenous Bolivian accused of a crime in Quechua territory, he said that Quechua community justice would prevail but that the central government would provide an interpreter as needed. (Note: the final decision on the case, which Ticona insisted had to be reached by consensus, would only involve the Quechua community in this example: not a "jury of his peers" for the Guarani defendant. End note.)

¶7. (C) The strength of community justice, according to Ticona, is that "everyone participates." He later clarified that children and outsiders are not part of 'everyone,' and

that community members are generally allowed to participate in community justice once they are married (at fourteen or fifteen years old, he suggested.) When asked about equal treatment for women under community justice, he said he was offended by the constant suggestions that women might be treated differently: after all, the wife of the community leader has a role in community leadership, and indigenous culture is based on this 'duality'. He did not answer whether the same rules would apply to men and women, although Flores did suggest that women would be less likely to be whipped. In response to press accusations that women in adultery cases are punished more severely than men under community justice, Flores stated that the situation is "different" for women, but declined to explain how.

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Corporal Punishment and Death
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¶8. (C) Insistent that community justice would not include a death penalty, Ticona was less willing to enter into details on what might constitute the most severe punishments under community justice. He expounded the benefits of corporal punishment over imprisonment (the breadwinner is able to continue to support the family, for instance), and asked if Emboff would not rather be whipped three times than spend three years in jail: it is not clear if one lash per year in

prison is a standard conversion or merely used for illustrative effect. He also said that the whipping is not intended as a physical punishment, but more as a symbolic punishment: the true punishment is the public shaming in front of the community. (Note: with more fluidity of movement in the country, the power of public-shaming is likely on the wane. End note.) In response to Flores' defensive comment that whipping was actually a Spanish punishment, Ticona clarified that it had been adopted by indigenous communities and softened to its new "symbolic" role. (Note: this was one of many contradictions in the meeting: that a "Spanish punishment" could play a significant role in a system of indigenous justice that rejects colonial influence. End note.)

¶9. (C) Ticona admitted that the maximum penalty under traditional community justice--expulsion--is less likely to work now that country-dwellers regularly leave their towns to seek their fortunes in the city. When asked about severe crimes that might occur in "community justice" areas (such as rape or murder), he said such crimes are more likely to take place in the city and therefore would fall under ordinary justice. Ticona avoided a follow-up question regarding whether ordinary justice would have to take precedence should rape or murder occur in the country. Since lynchings (often done in the name in community justice, often in the countryside) are in fact cases of murder, it is not clear whether ordinary justice would take over after mishandled "community justice."

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Communities Decide, Up to a Point
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¶10. (C) Although Ticona was adamant that the communities themselves would determine what form their community justice would take, he also rejected the idea that communities might include lynching in their concept of community justice--despite the fact that this seems to be happening in some communities. Regardless of the supposed empowerment of the communities to determine their own forms of justice, it seemed clear that Ticona believes the central government will have the final say on what constitutes community justice. (Comment: it was equally clear that the central government has no firm plan to address this question and will likely be overwhelmed if, in fact, thirty to fifty indigenous groups begin to exercise their own interpretations of community justice. End comment.)

Comment

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¶11. (C) Basing his defense on a good offense, Ticona started the meeting by asking "why is your government so worried about community justice," and proceeded to accuse the Embassy and USAID of "fomenting corruption" and "funding conspiracy and violence." Part of his defensiveness was no doubt due to the critical Human Rights Foundation report which he had in front of him (and for which he demanded explanations.) But some of the defensiveness of the meeting seemed to derive from the two officials' lack of concrete answers on their subject. The ruling Movement Toward Socialism party has offered up "community justice" as a fix-all for the country's weak legal presence. However, the government does not seem to have a clear plan for how the actual implementation of community justice will proceed. Nor is it clear what will happen if individual cases of community justice run afoul of human rights or the "ordinary" rule of law in Bolivia. Ticona repeatedly insisted that community justice is a human right in itself, which could make regulating community

justice difficult. In a growing list of campaign-promises gone sour, community justice may turn out to be one of the MAS's most difficult challenges. End comment.

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